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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 CEDCO, INC., a Nevada corporation,)

2:07-CV-01022-BES-GWF

10 Plaintiff,)

ORDER

11 vs.)

12 ARCH SPECIALTY INSURANCE AGENCY)
13 (dba ARCH SPECIALTY INSURANCE)
14 COMPANY, aka ARCH INSURANCE)
15 GROUP, a foreign corporation; DOES I)
16 through XX, inclusive; ROE)
CORPORATIONS I through XX, inclusive,)

Defendants.)
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Presently before this Court is Plaintiff's Motion to Remand (#9), filed August 30, 2007. The Court has also considered Defendant's Opposition (#15), filed September 27, 2007, and Plaintiff's Reply (#16), filed October 9, 2007.

BACKGROUND

On June 29, 2007, Plaintiff Cedco, Inc. ("Plaintiff") filed a Complaint in the Eighth Judicial District Court for the State of Nevada against Defendant Arch Speciality Insurance Agency ("Defendant"). In its Complaint, Plaintiff asserted several claims for relief based on the Defendant's alleged wrongful denial of insurance benefits. As a result of these claims for relief, Plaintiff sought general damages, consequential damages, special damages, damages for emotional distress, and punitive damages.

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1 Defendant filed a Notice of Removal (#1) on August 1, 2007, asserting that this Court
2 has jurisdiction pursuant to 28 U.S.C. § 1332. Specifically, Defendant states that there is
3 “complete diversity between Plaintiff and Defendant,” and that “the amount in controversy
4 exceeds the sum of \$75,000, exclusive of interest and costs.” (Notice of Removal (#1), pp.
5 2-3). In this regard, Defendant states that this action was commenced following the filing of
6 a claim for personal injuries against Plaintiff in another lawsuit. Id. That lawsuit arose from
7 a physical altercation that occurred between three of Plaintiff’s employees. One of the
8 employees, who alleged he was seriously injured as a result of the altercation, filed a lawsuit
9 against Plaintiff. Plaintiff submitted a claim to Defendant based on this personal injury lawsuit
10 seeking “payment for a defense and indemnification for, among other things, damages
11 because of ‘bodily injury.’” (Notice of Removal (#1), Exhibit B). Defendant argues that the
12 amount in controversy in this action exceeds \$75,000 because the plaintiff in the underlying
13 personal injury lawsuit incurred (i) a hospital bill in excess of \$70,272, (ii) surgical and related
14 expenses in excess of \$20,199, and (iii) related incidental post-surgical expenses.

15 Plaintiff now seeks to remand the case to state court on the basis that this Court does
16 not have jurisdiction because the amount in controversy is below \$75,000.

17 DISCUSSION

18 Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district
19 courts of the United States have original jurisdiction, may be removed by the defendant . . .
20 to the district court of the United States for the district and division embracing the place where
21 such action is pending.” Federal district courts have original jurisdiction over civil actions in
22 diversity cases “where the matter in controversy exceeds the sum or value of \$75,000” and
23 where the matter is between “citizens of different States.” 28 U.S.C. § 1332. If a case is
24 removed by a defendant, remand is appropriate if the federal court lacks subject matter
25 jurisdiction, or if a case is otherwise improperly removed. 28 U.S.C. § 1447. Because of a
26 strong presumption against removal, “the defendant always has the burden of establishing that
27 removal is proper.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

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1 In the case of removal based on diversity jurisdiction, “the status of a case as disclosed
2 by a plaintiff’s complaint is controlling” to determine whether the amount in controversy has
3 been met. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 291 (1938); see also
4 Pachinger v. MGM Grand Hotel-Las Vegas, Inc., 802 F.2d 362, 363-64 (9th Cir. 1986). Where
5 it is not facially evident from the complaint that more than \$75,000 is in controversy, the
6 removing party must prove, by a preponderance of the evidence, that the amount in
7 controversy meets the jurisdictional threshold. Matheson v. Progressive Specialty Ins. Co.,
8 319 F.3d 1089, 1090 (9th Cir. 2003)(citing Sanchez v. Monumental Life Ins. Co., 102 F.3d 398,
9 403-04 (9th Cir. 1996)). “If it is *unclear* what amount of damages the plaintiff has sought . . .
10 then the defendant bears the burden of actually proving the facts to support jurisdiction,
11 including the jurisdictional amount.” Krajca v. Southland Corp., 206 F.Supp. 2d 1079, 1081
12 (D.Nev. 2002)(emphasis in original)(quoting Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
13 1992)). Thus, the court will consider “facts presented in the removal petition as well as any
14 summary-judgment-type evidence relevant to the amount in controversy at the time of
15 removal.” Matheson, 319 F. 3d at 1090. Where doubt regarding the right to removal exists,
16 a case should be remanded to state court. Id.

17 In this case, Plaintiff has asserted that the case should be remanded because the
18 amount in controversy requirement has not been met. According to Plaintiff, the amount in
19 controversy is \$21,039.42. (Motion to Remand (#9), p. 4). In this regard, Plaintiff states that
20 the medical expenses incurred by the personal injury plaintiff in the underlying suit totaled
21 \$71,039.42. Id. Plaintiff then deducted an insurance deductible of \$50,000 from that amount
22 to arrive at \$21,039.42. Id. However, this Court finds that the Plaintiff’s argument that the
23 amount in controversy does not exceed \$75,000 without merit.

24 The Complaint in this action asserts various claims for relief based on the Defendant’s
25 alleged wrongful denial of insurance benefits following the filing of a personal injury lawsuit
26 against Plaintiff by one of Plaintiff’s employees. As such, the amount in controversy in this
27 case is directly related to the damages claimed by the personal injury plaintiff. In its Notice of
28 Removal, Defendant proved that the amount in controversy exceeds \$75,000. Defendant

1 showed that the personal injury plaintiff's medical bills alone were \$70,272. Moreover, the
2 personal injury plaintiff sought damages above and beyond his claim for medical expenses.
3 (Opposition (#15), Exhibit A). In addition to the \$70,272, the personal injury plaintiff sought
4 damages for pain and suffering, future medical expenses, lost wages, and emotional distress.
5 Thus, based on the underlying plaintiff's known medical expenses of \$70,272 and the fact that
6 he is seeking additional damages, Defendant has satisfactorily proven that the amount in
7 controversy is sufficient for diversity jurisdiction. Furthermore, Plaintiff is seeking punitive
8 damages in this case based on Defendant's alleged misconduct. As such, even accepting the
9 Plaintiff's \$21,039.42 figure for the personal injury plaintiff's medical expenses, the amount in
10 controversy still exceeds \$75,000 when that number is added to the other damages claimed
11 in the underlying suit and the Plaintiff's claims for punitive damages.

12 CONCLUSION

13 IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (#9) is DENIED.

14 DATED: This 30th day of January, 2008._

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18 UNITED STATES DISTRICT JUDGE
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